UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,546	05/16/2001	Guy G. Morneault	TE/10310	9721

23971 7590 01/24/2006

BENNETT JONES
C/O MS ROSEANN CALDWELL
4500 BANKERS HALL EAST
855 - 2ND STREET, SW
CALGARY, AB T2P 4K7
CANADA

EXAMINER	
JASTRZAB, KRISANNE MARIE	
ART UNIT	**PAPER NUMBER**
1744	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/855,546	MORNEAULT ET AL.	
	Examiner	Art Unit	
	Krisanne Jastrzab	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,5,7,8,10-12,16,18,21-26 and 28-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5,7,8,10-12,16,18,21-26 and 28-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-2, 5, 7-8, 10-12, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Hirai U.S. patent No. 5,015,442 and Pellin U.S. patent No. 4,102,654.

Nelson teaches an apparatus for maintaining the integrity of an isolation room of a hospital wherein a high mass-flow rate air mover is rigidly mounted within a housing cooperatively with a dual air flow zone and a UV emitter (see column 7, lines 15-65).

Hirai '442 teach the provision of a bypass within a high flow capacity air sterilizing/deodorizing apparatus in order to optimize efficient air treatment for large flow volumes. See column 2, lines 39-55, column 3, lines 27-32 and column 4, lines 5-20.

Pellin teaches the construction of an air purification device employing a UV source, with a venturi configuration that enhances irradiation of the air and opens to diffuse the air at the outlet. See the figure and column 2, lines 58-68.

It would have been well within the purview of one of ordinary skill in the art to provide a bypass configuration within the apparatus of Nelson, because it would act to optimize effective treatment, as taught in Hirai, while maintaining volume flow through, as required by Nelson. It would further have been obvious to construct the outlet of the UV source as in Pellin because it would enhance irradiation contact time with the air, while controlling the air flow at the outlet thereof.

Further with respect to claims 2-4, 7-8, 10-12, 16 and 18, Nelson teaches the basic configuration having the blower inlet above the UV emitter, however, with respect to the instant claims it is well held in the art that the re-arrangement of structural

elements without a change in their function is a matter of design change, which does not provide patentable distinction over the art.

Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Hirai U.S. patent No. 5,015,442 and Haidinger et al., U.S. patent No. 5,505,904.

Nelson, Hirai and Pellin are applied as set forth above.

Haidinger et al., teach the known and expected provision of baffle means upstream of a UV source in air treatment. Haidinger et al., teach the placement of such baffle means to produce a uniform cross-sectional air flow, which acts to ensure thorough treatment of all air in the vicinity of the UV source. See column 3, lines 27-68.

It would have been obvious to one of ordinary skill in the art to employ baffle means as taught in Haidinger in the combination of Nelson and Hirai, because it would uniformly distribute the air flow over to the UV source to ensure complete, thorough treatment of the air within the system.

It would further have been well within the purview of one of ordinary skill in the art to construct the outlet of the UV source in the combination above, as in Pellin because it would enhance irradiation contact time with the air, while controlling the air flow at the outlet thereof.

Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Hirai and Pellin and further in view of either Knuth et al., U.S. patent No. 5,997,619 or Tuckerman et al., U.S. patent No. 5,616,172.

Nelson, Hirai and Pellin are applied as set forth above.

Both Knuth et al., and Tuckerman et al., teach the known and expected provision of providing air purifying device employing UV sources in a portable configuration such that they can be transported to areas of need instead of being restricted to stationary positioning.

It would have been well within the purview of one of ordinary skill in the art to provide means such as wheels and casters as taught in Knuth et al., and Tuckerman et al., as well as the air directing louver means, to configure the system of the combination of Nelson, Hirai and Pellin, as a portable air treatment device because it would allow for application of the clean room capability at various, remote locations of need.

Response to Arguments

Applicant's arguments filed 11/15/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that baffles and the venturi means of the instantly claimed device are chosen in order to increase residence time in the device, not to block UV radiation from escaping the device nor for ensuring flow of the air along the walls of the device as in the prior art, however, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

The Examiner would further note that the properly combined references above provide structure fully capable of acting as Applicant argues that the instant invention performs.

Conclusion

This is a RCE of applicant's earlier Application No. 09/855,546. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Krisanne Jastrzab
Primary Examiner
Art Unit 1744

January 23, 2006